

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

PORT HAMILTON REFINING &
TRANSPORTATION, LLLP,

Plaintiff,

vs.

NATIONAL INDUSTRIAL SERVICES, LLC,

Defendant.

CASE NO.: 1:24-CV-00023

ACTION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY INJUNCTION, AND
PERMANENT INJUNCTION

DECLARATION OF DARRIN DRAKE

I, Darrin Drake, hereby declare as follows:

1. I am a resident of St. Croix, USVI.
2. I am the safety coordinator for National Industrial Services, LLC ("NIS") and have been for 9 years.
3. As a result of my job, I am experienced with the safety regulations that NIS must follow pursuant to the St. Croix Refinery's Hurricane Preparedness Plan and Occupation Safety and Health Administration ("OSHA") regulations as well as NIS Policies and Procedures.
4. Pursuant to OSHA Regulation 1926.451, NIS is required to inspect scaffolding for visible defects.
5. Pursuant to the Hurricane Preparedness Plan & associated MTCE-Scaffold Hurricane Checklist, NIS is required to secure any scaffolds that cannot be removed or demolished ahead of a storm arrival.

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6. NIS is required to have insurance and indemnified Port Hamilton Refining and Transportation, LLLP (“PHRT”) against injuries occurring related to the use of the scaffolding or scaffolding in general.
7. OSHA requires “periodic inspection” of all scaffolding material, NIS procedure defines periodic to mean annual inspection and has codified it as such.
8. To properly maintain its scaffolding, NIS is required to dismantle, remove, and inspect it on an annual basis. This is specifically codified in NIS’s SHMM E.5.a.
9. Due to the corrosive environment in which we operate, being in such close proximity to the ocean in a high humidity environment, we have found that the material degrades and deteriorates at an accelerated rate.
10. Leaving any scaffold standing for more than one year results in severe damage to the material, especially the wooden planks.
11. Public safety is particularly important during hurricane season, which runs from June through November each year. NIS removes scaffolding to avoid the risk of falling or flying materials, which is of particular concern during hurricane season given the threat of damaging storms and high-speed winds.
12. Based on my knowledge and experience with this facility and of scaffolding in general, it is absolutely critical that we reduce the number of standing scaffolds to minimize risks associated with high wind events.
13. It is important to get the number of scaffolds down to a manageable level that can be safely secured 72 hours ahead of a storm arrival.

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14. NIS has maintained an excellent safety record over the years by going above and beyond the requirements when it comes to maintaining our equipment and materials, especially scaffolding, we are very concerned about the condition of our scaffolding still standing on PHRT property but are being prevented from tearing it down.

I am prepared, as necessary, to further explain or elaborate on any of the points I have made in this declaration as warranted for the Court.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that everything I have stated in this document is true and correct.

Dated: September 23, 2024



Darrin Drake